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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975

## No. 75-130

**ROBERT J. QUINN, individually and as Commissioner of the Chicago Fire Department,**

*Petitioner,*

vs.

**FRANCIS MUSCARE,**

*Respondent.*

**On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit**

## PETITIONER'S REPLY BRIEF

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## ARGUMENT

### I.

### MUSCARE HAD A PRESUSPENSION HEARING.

### EVEN UNDER HIS OWN THEORY THAT A PRESUSPENSION HEARING IS A REQUIREMENT OF CONSTITUTIONAL COMPULSION, MUSCARE WAS NOT DENIED DUE PROCESS.

As we have already stated in the reply brief we filed while our petition for certiorari was pending, respondent Muscare's statement of the case presents his

suspension without its background. His brief on the merits fails to correct the false impression created. By dramatizing only the last act, with no explanation of how the protagonist got into his predicament and found himself subject to discipline by his employer, Muscare endeavors to make it seem as though his superior officers suddenly, without warning, descended upon him and, without explanation, abruptly and arbitrarily threw him out of the fire station.

The amicus curiae brief presented by the Illinois Division of the American Civil Liberties Union (p. 4) follows tamely along in perpetuating that error.

Actually, according to Muscare's own testimony (App. 122-125), his dispute with the Chicago Fire Department as to his wearing of whiskers had a history of some three years. He had twice before violated the departmental safety regulation concerning facial hair and had twice acknowledged the force and purport of that regulation by grudgingly complying with it only to violate it again. His contemptuous defiance of the regulation and of the orders of his superiors, issued to him in enforcement of it, was open, unmistakable and, by its very nature, conspicuous and disruptive of discipline.

This is a due process case only by virtue of misstatement of the facts. Muscare does not dispute that he was wearing a goatee. The complaint he filed in instituting this action so states (App. 5, 6). Attached to the complaint, are Exhibits A and B, two photographs of Muscare, showing him wearing both a beard and a firehat (App. 20, 11). The complaint also sets forth the departmental regulation prohibiting the wearing of such facial hair (App. 6).



Muscare does not deny the applicability of the regulation to his beard. He does not deny that he was in violation of the regulation. He does not gainsay the authority of the fire department to issue and enforce rules governing its employees. What he claimed is that the regulation is unconstitutional, that it infringes upon his First Amendment right to determine his own appearance, and that the regulation is unnecessary to safety.

Muscare had three years notice of the department's recurring dissatisfaction with him. He presented his view of the matter to the department on several occasions—including a hearing before a departmental board consisting of two fire chiefs and an instructor at the Fire Academy (App. 123-125). Following the hearing, he complied with the board's directive to shave, then defied it by letting his beard grow again.

If Muscare's superiors are open to any criticism as to their handling of the matter, it is that they were too lenient with Muscare, probably because he was an employee with many years seniority. Muscare was openly violating a safety rule. This was properly an emergency matter. He should have been suspended much more promptly. But from the forebearance of his superiors, lengthened by the fortuitous circumstance of the serious illness of the superior with authority to suspend him, Muscare seeks to extract the argument that enforcement of the safety regulation was not an emergency matter.

The Court of Appeals has ignored these facts which are so plain in the record. Instead of viewing the evidence realistically, it has permitted itself to be persuaded by the generalizations of the respondent, based on an expurgated version of the events, and has concluded that "no hearing of any kind was accorded Appellant before his suspension" (App. 164).

## II.

## PRESUSPENSION HEARINGS FOR TENURED PUBLIC EMPLOYEES ARE NOT REQUIRED BY THE DUE PROCESS CLAUSE.

The respondent has failed to respond to our criticism (Petitioner's Brief, pp. 20-25) of the 7th Circuit's misapprehension of the purport of this Court's rulings in *Arnett v. Kennedy*, 416 U.S. 134 (1974), and *Goss v. Lopez*, 419 U.S. 565 (1975). By a species of confession by avoidance the respondent has merely repeated the errors (Respondent's Brief, pp. 17-20).

The amicus curiae brief filed by the Coalition of American Public Employees (p. 10) takes issue with our contention (Petitioner's Brief p. 21) that in *Arnett v. Kennedy* a majority of five members of this Court held that in civil service discharge cases due process is satisfied by a post-removal hearing. We were mistaken. Six members of the Court were of that opinion.

It is true that, as the C.A.P.E. amicus curiae brief (p. 14) states, in *Arnett* the issue was whether a full-trial type hearing was required. The statute governing Kennedy's rights as an employee provided for a pre-termination notice and hearing but expressly stated that such hearing was not to be a trial, except in the discretion of "the individual directing the removal or suspension." Kennedy claimed that due process required that his statutory pre-termination hearing be a trial.

Only three members of the Court—Justices Douglas, Brennan and Marshall—agreed with him. Of the others, three—the Chief Justice and Justices Stewart and Rehnquist—held that the employee had only those rights to notice and hearing that were granted to him by statute—nothing more. Two justices—Justices Blackmun and Powell—held that although the employee's rights



were created by statute, they were protected from deprivation by the Due Process Clause, but this would be satisfied by a post-termination hearing. Justice Powell observed that the Government's interest in acting expeditiously in discharge cases was substantial (416 U.S. at 168) and the general practice of most federal agencies indicates that "efficiency is in fact thought to be adversely affected by prior evidentiary hearings" (*idem.*). Justice White was of the opinion (416 U.S. at 178) that the hearing need not be a trial and that it should occur before the discharge becomes final, but not necessarily before it becomes effective.

It should be carefully noted that *Arnett v. Kennedy* is a discharge case, entailing a much more severe and stigmatizing penalty than even a 29 day suspension, the penalty in the case at bar. It should also be noted that the principle contended for by respondent—that a pre-suspension hearing is constitutionally required on every suspension of a tenured government employee—would, if sustained, be applicable even to a suspension of no more than one day.

In our principal brief (p. 25) we observed that the correctness of our reading of *Arnett v. Kennedy* has been confirmed by this Court's recent per curiam opinion in *Boehning v. Indiana State Employees Association, Inc.*, No. 74-1544, 44 LW 3275 (decided November 11, 1975). There the Seventh Circuit had found that the Indiana Administrative Adjudication Act, as yet unconstrued by the Indiana courts, contained nothing that would support a state civil service employee's claim for a pretermination hearing. The Seventh Circuit then, on federal constitutional grounds, resolved the employee's claim for a pretermination hearing in her favor. In reversing the Seventh Circuit, this Court found the Indiana statute

ambiguous and ruled that the federal courts should abstain from deciding the federal constitutional issue pending resolution of the state law question in the state courts. In a footnote, the per curiam opinion of this Court further stated:

> "The possibility that the Indiana State courts would adopt the construction contrary to that of the Seventh Circuit Court of Appeals is somewhat enhanced by the fact that the construction adopted by the Seventh Circuit may fairly be said to raise federal constitutional problems under recent procedural due process decisions of this Court, e.g. *Arnett v. Kennedy*, 416 U.S. 134, particularly if, as the Seventh Circuit appears to have assumed the Administrative Adjudication Act would leave respondent without a state law right to a hearing at any time in connection with her dismissal for cause
>
> . . .
>
> "Although the question of respondent's federal constitutional right to a hearing *at some time*, in connection with a discharge for cause may already have been resolved in respondent's favor in *Perry v. Sinderman*, 408 U.S. 593 (1972), *Board of Regents v. Roth*, 408 U.S. 564 (1972), and *Arnett v Kennedy*, 416 U.S. 134, the tenured employee's right to a preremoval hearing has been determined by this Court only in the context of a statute providing notice and an opportunity to respond in writing before removal, coupled with a full hearing after removal. See concurring opinion of Powell, J. *Arnett v. Kennedy*, supra at 164, 170." (Emphasis supplied.)

The plain meaning of those words is that a tenured public employee has a constitutional right to a hearing on his discharge for cause at some time either before or after the discharge, but that his claim to have a hearing before the discharge becomes effective is dependent



upon the existence of a statute granting him the right to a pretermination hearing. As Justice Powell remarked in *Arnett* (416 U.S. at 168 fn. 4):

> "[T]he fact that some federal agencies may have decided to hold evidentiary hearings cannot mean that such a procedure is constitutionally mandated. The Federal Government's general practice to the contrary argues that efficiency is in fact thought to be adversely affected by prior evidentiary hearings."

Respondent's contention (Respondent's Brief p. 18) that in *Arnett* the existence of a statutory pretermination procedure was essential to this Court's determination is not borne out by the text of the several opinions in this Court.

As for *Goss v. Lopez*, 419 U.S. 565 (1975), which the Seventh Circuit stated (520 F. 2d at 1215) "points the way to our resolution of the present case", respondent endeavors (Respondent's Brief, p. 19) to confirm the correctness of the Seventh Circuit's reliance on *Goss* by quoting the remark of the Court that, in the context of the school situation, "as a general rule notice and hearing should precede removal of the student from school" (419 U.S. at 582). Respondent fails to mention that in *Goss* this Court went on to say (*ibid.*) that "[s]tudents whose presence poses . . . an ongoing threat of disrupting the academic process may be immediately removed from school." Surely, respondent Muscare's open and recalcitrant flouting of departmental regulations posed an ongoing threat of disrupting the firefighting process, which requires discipline and the prompt carrying out of orders.

Palpable differences exist between schools and fire departments. Pupils are either children of tender years or immature teenagers. Firemen are adults who have

been especially trained in their demanding and hazardous occupation and are required to pass examinations before achieving tenure. The disciplinary officer of a school, who is usually the principal, is ordinarily present in the school building during school hours and the student can easily be brought before him. The commissioner or superintendent of a large metropolitan fire department commonly has a centrally located office, often miles away from the fire station where the particular fireman is employed and he has a multitude of other matters, many of them emergencies, competing for his attention.

The pupil in school has a statutory right to an education. Suspension for cause is a loss of that right. Even if it is later recognized that the suspension of a student was made in error, time lost from school cannot be made up without overtime study or delay in advancing to a higher grade.

The property right of a tenured public employee in his job is a property right of a peculiar sort. Unlike the right to real or personal property, the right to a job is not an exclusive right to possess, enjoy and dispose of as a particular thing. The right to a particular job is merely the right to continue working in return for pay. It is an interest in participating in organized social activity—here the activity of fighting fires. To participate thus, one must not only be qualified to do the work, but also willing to cooperate with others in the organized, disciplined activity.

The right to a job is a valuable interest that can be a source of the acquisition of property in the form of wages—if one does the work. But suspension of the opportunity to do that particular work does not deprive the employee of the opportunity to work at other things—



either other employment for others or for himself, or to perform needed work around the home—or even to take a vacation. If the suspension is found unjustified, under the Illinois statute, the employee is paid for the period of his suspension.

We do not mean to minimize the inconvenience and even hardship that may result to an employee because of a suspension of several weeks, or even a week's duration. But, as Justices Powell and Blackmun recognized in *Arnett v. Kennedy*, 416 U.S. at 164, the interest of the government in having the discretion expeditiously to discipline and remove employees who hinder governmental operations outweighs the private interests of the employee.

Nor is it to be presumed that a tenured civil service employee—particularly one who, like Muscare, has enjoyed that status for 20 years—is so devoid of funds that he cannot endure a short interruption of his employment. Furthermore, most suspensions are for much less than 29 days; usually they are for only a few days, or even only one day. Therefore, the welfare cases cited by respondent, such as *Goldberg v. Kelly*, 397 U.S. 254 (1970), which held that due process requires a pretermination hearing in revocation of benefits, are inapposite. A welfare recipient is by definition on the brink of starvation and his right to benefits is a statutory entitlement to a modest amount of personal property, not a simple opportunity to do remunerative work.

In like manner, the garnishment cases cited by respondent, such as *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), and *North Georgia Finishing Co. v. Di-Chem, Inc.*, 419 U.S. 601 (1975), are also not pertinent. Most garnisheed employees are insolvent. The wages garnisheed are more than an opportunity to earn

money, by doing work; they are money already so earned, to which, except for the garnishment (and tax withholdings), the employee would have the exclusive right of enjoyment.

Analogous considerations make *Fuentes v. Shevin*, 407 U.S. 67 (1972) inapplicable; that case concerned due process in repossession and seems to have been reversed two years later by *Mitchell v. W. T. Grant Co.*, 416 U.S. 600 (1974).

Several of the other cases cited by respondent are even less relevant to the issue presented here. *Morrisey v. Brewer*, 480 U.S. 471 (1972), which held that at least an informal hearing is required in revocation of parole, *Gagnon v. Scaparelli*, 411 U.S. 778 (1972) (probation revocation), and *Wolff v. McDonald*, 418 U.S. 539 (1974) (in-prison discipline cases), all concerned the imposition or reimposition of criminal penalties, in which due process requires a prior hearing.

The able amicus curiae brief of the Coalition of American Public Employees (pp. 17-21) argues at length that a presuspension hearing was required, even under the facts of the instant case, in order to afford Muscare an opportunity to justify his conduct and to prove mitigating circumstances to the superior having authority to impose a penalty. This argument overlooks the fact that Muscare had such a hearing before a departmental board, which reprimanded him as not knowing the meaning of discipline and ordered him to shave off his beard (App. 124-125)—an order with which he first complied, then defied. Even if this hearing had not taken place, Muscare had a statutory right to a post-suspension hearing under Illinois Rev. Stat. ch. 24, par. 10-1-18, with the statutory right to judicial review—rights he chose not to exercise. We submit that under the authority of *Arnett v. Kennedy*, 416 U.S. 134 (1974) and *Boehning v. Indiana State Employees Assn.*, ..... U.S.



....., 44 L.W. 3275 (1975), the availability of this procedure to Muscare satisfied his claim to due process.

Indeed, the Court has already distinguished the cases on which respondent and the amici curiae rely—such as *Goldberg v. Kelly*, 397 U.S. 254 (1970), *Fuentes v. Shevin*, 407 U.S. 67 (1972), *Bell v. Burson*, 402 U.S. 535 (1971), and *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969)—from the situation in the case at bar. The opinion of the Court in *Arnett v. Kennedy*, 416 U.S. 134, at 155 (1974), states most forcefully and with unmistakable lucidity:

> "These cases deal with areas of the law dissimilar to one another and to the area of governmental employer-employee relationships with which we deal here. The types of 'liberty' and 'property' protected by the Due Process Clause vary widely, and what may be required under that clause in dealing with one set of interests which it protects may not be required in dealing with another set of interests.
>
> " 'The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.' *Cafeteria Workers v. McElroy*, 367 U.S. at 895, 6 L.Ed. 2d 1230."

In the governmental employer-employee relationship, the government's interest, and hence the public's interest, is in the maintenance of employee efficiency and discipline, as the concurring opinion of Mr. Justice Powell in *Arnett* recognized (416 U.S. at 168) and further noted:

> "This includes the prerogative to remove employees whose conduct hinders efficient operation and to do so with dispatch."

## III.

## THE NEW RULES OF PROCEDURE FOR EMPLOYEE DISCIPLINARY PROCEEDINGS WHICH CHICAGO HAS ADOPTED DO NOT CONSTITUTE A CONFESSION OF ERROR BY THE CITY.

On pages 4 and 5 of his brief on the merits, respondent correctly calls the attention of the Court to the fact that in August, 1975, the Rules of the Civil Service Commission of the City of Chicago were amended to provide in Rule VI, Section 7 for presuspension hearings in all suspensions, except emergency suspensions, which are also regulated in careful detail. These new rules are applicable to all civil service employees of the City of Chicago except members of its police department, who are governed by analogous rules, with right to a hearing before the Police Board instead of the Civil Service Commission (now called the Personnel Board).

This procedural change was adopted as an interim measure in the wake of the decision of the court of appeals in the case at bar. Since the disciplining of some municipal employees is a continuing experience, it was determined that it would be prudent to conduct such proceedings in accordance with the dictates of the Seventh Circuit, even if that were cumbersome and of doubtful efficiency and effectiveness, at least until the issues raised had been settled by this Court, if it chose to review the case, which it has done, rather than risk the possibility of suspensions entered in violation of the employee's constitutional rights.

Section 7B of the amended rules provides that in suspensions of not more than five days, in the absence of emergency, no suspension shall be effective for 24 hours



after service of the notice of suspension. If no request for a hearing is made during those 24 hours, the suspension becomes effective upon the expiration of the 24 hours. If the employee requests a hearing, and if, after reviewing the record of the hearing, the department head conforms to his initial decision, the suspension does not become effective until the department head notifies the Civil Service Commission.

Emergency suspensions are processed differently. In such cases the notice of suspension served upon the employee must include an express finding by the department head that the public safety or the good of the department, or both, require the immediate suspension of the employee. Thereupon, not later than seven days after service of the notice of emergency suspension upon the employee, the Civil Service Commission must review the order of the department head, together with the reasons therefor. If the order is reversed by the Commission, the employee shall be reinstated and paid for any period of suspension resulting from the order. If the order is preliminarily affirmed, the Civil Service Commission shall within 21 days of such affirmance afford the employee an opportunity to appear before the Commission and receive a hearing. If the Civil Service Commission, upon a hearing, determines that the suspension was unwarranted, the employee is to be reinstated and paid for the period of unwarranted suspension.

In non-emergency suspensions in excess of five days, the employee may obtain a hearing before the Civil Service Commission upon request made within 24 hours after service of the notice of suspension. If no such request is made within the 24 hours, the suspension shall then become effective immediately. If a hearing is seasonably requested, and the Commission, after a hear-

ing, affirms the order, the suspension then becomes effective immediately.

A copy of these rules must be attached to every notice of suspension.

These changes in suspension procedures do not constitute a confession of error by the petitioner in the instant case. As we have stated, they are an interim measure, an experiment which may become a permanent part of the general overhauling of employment relations within the local government of the City of Chicago, now going on, which is being made pursuant to the home-rule powers granted the City by the Illinois Constitution of 1970.

In our petitioner's brief on the merits (pp. 28, 29), we declared, "It may well be that from a management-employee relations point of view, pre-suspension hearing is, in most instances, preferable to a post-suspension hearing, provided the governmental agency has the available resources . . . [E]ven if pre-suspension hearings are usually preferable, that does not make them a constitutional imperative."

We are not aware of any dissatisfaction on the part of two of the various amici curiae, who have filed briefs in support of the position of the respondent, with the present employee suspension procedures of the City of Chicago. The admonitions of the American Civil Liberties Union and the Coalition of American Public Employees as to the desirability of pre-suspension procedures are, we believe, fully met by these new rules. If they work out satisfactorily, the likelihood is that they will be continued in effect. It is not true that such advantages have not been extended to Chicago police officers, as is stated in the amicus curiae brief filed by the Chicago Patrolmen's Association (p. 2). Police officers



are governed by similar rules, but with the right to a hearing before the Police Board, instead of the Civil Service Commission (now known as the Personnel Board). Moreover, no police officers are parties to the present controversy and there is nothing in the record relating to the special problems of police departments.

## IV.

## THE FACIAL HAIR RULE OF THE CHICAGO FIRE DEPARTMENT IS CONSTITUTIONAL.

It is the view of numerous fire departments throughout the nation that hair, in excess of modest limits, on the face of a fireman interferes with the efficient use of the safety masks that firemen must frequently wear. This is evident from the lawsuits concerning this issue, such as *Yarbrough v. City of Jacksonville*, 363 F. Supp. 1176 (D.C. Md., Fla. 1973) and *Hordorwich v. Board of Police and Fire Commissioners of Melrose Park*, 18 Ill. App. 3d 20 (1974). See also the Health and Safety Standards of the Fire Department of New York City (Prentice-Hall Public Personnel Administration, vol. 2, no. 4, p. 5 (July 30, 1974) ).

Given the current desire of many men to wear beards and/or long hair, the recurring question of the constitutionality of the fire department regulations limiting facial hair has become one of pervasive importance, which should ultimately be settled by this Court. That this is so is clearly indicated by the grant of certiorari by this Court in *Barry v. Dwen*, No. 74-1269 (argued December 8, 1975), which is concerned with the validity of analogous, but less urgent hair rules for policemen.

Although this Court, in reversing a court of appeals, commonly does not pass upon questions not ruled upon by the court of appeals, but remands the case to the

court of appeals for consideration by it of such issues (*Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 at 397, 398 (1971), there is nothing to prevent this Court from disposing of such an issue itself. Where there are reasons for expediting solution of the question, this Court has seen fit to do so. *Dandridge v. Williams*, 397 U.S. 471 (1970); *Regional Rail Reorganization Act Cases*, 419 U.S. 102, at 140 (1974). This is admitted by the amicus curiae brief of the AFL-CIO (p. 30).

The facial hair rule of the Chicago Fire Department is a safety measure. Firefighting is one of the most hazardous of occupations. Safety is a compelling governmental interest. The safety of firemen and the public should not continue to be jeopardized by uncertainty about the validity of facial hair rules for firefighters.

Respondent has failed to argue the validity of the facial hair rule on the merits (Respondent's Brief, p. 2). By so doing, we submit, respondent has waived the issue.

It is true respondent states (*ibid.*) that "On this question, Respondent adopts the response of Amicus Curiae, AFL/CIO." However, the AFL-CIO is not a party. Respondent cannot discharge its obligation to argue the merits by farming it out to a bystander to argue in a separate brief.

The amicus curiae brief of the AFL-CIO fails to respond to our argument of the issue in our principal brief (pp. 33-40). Instead, the brief presented in the name of the AFL-CIO devotes more "reams of paper" (p. 9) to discussion of whether the right to wear one's hair as one pleases is constitutionally protected—a view not accepted by the Fifth, Sixth, Ninth and Tenth Circuits and at times by the Seventh. The fact of the matter is that all the precedents, even those which most strongly



affirm that the right to determine one's own appearance is of constitutional dimension, such as *Dwen v. Barry*, 483 F. 2d 1126 (2 Cir. 1973), recognize that that right is subject to reasonable limitations in the interest of public safety.

The AFL-CIO brief admits (p. 13) that the safety interest of the Department is legitimate, substantial and entitled to much weight. But the brief is in error in arguing (p. 25) that "the Department has not demonstrated a concern with the efficient use of these masks sufficiently to impel them to assure their availability." On the contrary, the Chicago Fire Department has provided such masks since 1958 (App. 100, 104). Two such masks are assigned to each hook and ladder company, and two masks are assigned to each of 24 engine companies. The department plans to have seven flying squads, each with six masks apiece. In 1973 the department purchased 150 new gas masks at a cost of $400 each. The Department has also demonstrated an interest in the efficient use of the masks by promulgating—and enforcing—the facial hair rule.

From the fact that the rule permits limited moustaches and limited sideburns and that some firemen wear these, apparently without interfering with the working of the masks, the AFL-CIO brief (p. 7) argues that "many people with facial hair do obtain an adequate seal." This is a confusion of genus and species. We are here concerned not with a prohibition of all facial hair, but with the validity of the ban on the type of facial hair prohibited by the rule. The permission given the firemen to wear limited moustaches and limited sideburns demonstrates the concern of the Department to interfere with the personal appearance of its firefighters no more than necessary.

The AFL-CIO brief, while admitting the importance of the safety consideration, argues (p. 13) as though "the intrusion here . . . beyond working hours into the firemen's daily lives" is the paramount consideration. Apart from the intrusion being susceptible of exaggeration, there is nothing to prevent hair enthusiasts from wearing wigs and false whiskers in off-hours. However, it seems better to recognize this indirect effect of the rule as one of the many sacrifices a man must make in choosing to be a fireman.

The suggestion in the AFL-CIO brief (pp. 13, 14) that a fireman's right to wear a beard should be determined by individual testing is unrealistic. Individual testing would be inconclusive. The men do not have their own individual masks, but take one available on the particular fire truck on which they happen to be working at the time. Conceivably, a beard might not interfere with the functioning of one mask, but would do so with another. Furthermore, beards continue to grow. A test result might no longer be valid a month later. Clearly, the individual testing of men choosing to wear beards would have to be repeated periodically and frequently.

The amicus curiae brief of the AFL-CIO fails to recognize what the district court so clearly understood, when it correctly stated in its opinion (App. 148, 149):

> "What we have before us is the validity of a regulation and its reasonableness generally. And the question of whether it is reasonable in terms of the individual context, which was raised here, I don't think is relevant . . . After hearing the evidence and examining the exhibits, I find the justification of the Fire Department, that is, the requirement limiting facial hair for reasons of safety related to the fit of the face mask of self-contained breathing apparatus, is neither capricious nor arbitrary justification. It appears to be grounded in reason. And it also appears to be a minor abridgement of personal liberty, which is justified by safety regulation."



## CONCLUSION

The decision of the district court is supported by substantial evidence and is not clearly erroneous. Its reversal by the court of appeals was therefore error and should be reversed.

Respectfully submitted,

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